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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA – SANTA ROSA DIVISION
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11 In Re:

12 DEAN GREGORY ASIMOS,

13 Debtor.
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Case No.: 11-13214-AJ

Chapter 13

DEBTOR'S MOTION TO VALUE
COLLATERAL AND AVOID SECOND
LIEN

NO HEARING REQUESTED

Judge: Hon. Judge Jaroslovsky
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18 To Vincent P. O'Leary, an individual, Ocwen Financial Corporation, its
19 successors, subsidiaries, assignees, transferors, and all other interested parties:
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21 Dean Gregory Asimos (hereinafter "Debtor") hereby moves this Court for an
22 order classifying the second mortgage (hereinafter "Debt") of Vincent P. O'Leary, an
23 individual (hereinafter "Lender") as unsecured in that there is no equity in the subject
24 real property and to avoid the deed of trust in favor of Lender recorded against the
25 title of the real property located at 1040 East MacArthur Street, Sonoma, California
26 95476.

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1 **JURISDICTION AND VENUE**

2 The court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§151,
3 157, and 1334 and Fed. R. Bankr. P. 7001. This is a core proceeding under 28 U.S.C.
4 §157(b)(2)(F). Venue in this Court is proper pursuant to 28 U.S.C. §1409 because this
5 motion arises in this bankruptcy case.

6 **GENERAL ALLEGATIONS**

7 This case was commenced on August 29, 2011, when Debtor filed a voluntary
8 petition for relief under chapter 13 of the Bankruptcy Code. Debtor owns the
9 aforementioned real property located at 1040 East MacArthur Street, Sonoma,
10 California 95476 (hereinafter “the Property”).

11 The Property has a fair market value of approximately \$607,600. The valuation
12 is predicated upon the Debtor’s information and belief and upon an online valuation
13 incorporating analysis of square footage, amenities and recent sales of similar
14 properties in the surrounding area, which estimate is attached as **Exhibit C** to the
15 Declaration of Dean Gregory Asimos filed concurrently with the instant motion.

16 There is a first and second mortgage or deed of trust recorded against title of
17 the Property. The first is in favor of Ocwen Financial Corporation and has a current
18 amount owing of approximately \$764,872.80. The second deed of trust is in favor of
19 Lender and has an approximate amount owing of \$125,000. A true and correct copy
20 of Debtor’s Schedule D (Creditors Holding Secured Claims) evidencing the balances
21 of the liens as of the date of filing is attached as **Exhibit B** to the Declaration of Dean
22 Gregory Asimos filed concurrently with the instant motion.

23 The second trust deed in favor of Lender is avoidable as the value of the
24 Property is less than the amount of the first deed of trust. Therefore, the second deed
25 of trust does not attach to the Property and is wholly unsecured.

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The second mortgage lien is therefore properly avoided by this Court and should be classified as unsecured.

SAGARIA LAW, P.C.

Dated: August 30, 2011

By: /s/ Elliot Gale, Esq.
Elliot Gale, Esq.
Attorney for Debtor